Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-588

IN THE MATTER OF UNITED CASKET CO., INC.,
Bankrupt.

YORK-HOOVER CORP. AND ELGIN METAL CASKET CO., INC.,
Petitioners,

v.

UNITED CASKET CO., INC.,
Respondent,

and

DEPARTMENT OF TAXATION AND FINANCE OF THE STATE OF NEW YORK,
Respondent.

REPLY BRIEF OF PETITIONERS YORK-HOOVER CORP. and ELGIN METAL CASKET CO., INC. FOR WRIT OF CERTIORARI

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REPLY BRIEF OF PETITIONERS

The respondents, New York State and the Trustee in Bankruptcy, refer to the inherent authority of the sovereign to establish a taxing system according certain priorities to governmental agencies, and seek to distinguish between the rights of the State and a non-sovereign judgment creditor.

The State established its own statute, § 1141(b) of the New York State Tax Law. In such statute, entitled "Proceedings to Recover Tax", the State provided for a lien against personal and real property and the manner of proceeding to collect the tax. The statute specifically provides

for the State tax warrant to be delivered to the sheriff, who is commanded to act in accordance with the statute "in the same manner and with like effect, as that provided by law in respect to executions issued against property upon judgments of a court of record". The statute does not distinguish between a sovereign and a non-sovereign judgment creditor, but accords them the same rights, arising from the filing of the tax warrant by its recordation as a judgment. Accordingly, the warrant must be issued to be acted upon, and failure to proceed invalidates the lien.

As was pointed out in the original brief, a judgment was considered a lien against real property solely. *State Tax Commission* v. *Shor*, 43 N.Y. 2d 151.

In the instant case, the State received approximately $35,000 on account of its warrant from monies and merchandise totalling approximately $125,000 advanced by petitioners to enable the debtor to remain in business. The petitioners received nothing in repayment.

Even the Federal government gives notice of its lien by filing such notice among records relating to security interests (I, p. 28). The State notice was inadequate and the State seeks to put an undue burden on commerce to search judgment records for a period of twenty (20) years prior to each sale of merchandise.

By reason of the above and the reasons set forth in the petitioners' primary brief, the Court should grant certiorari.

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